

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.24827 OF 2004

Dated : 10th July, 2006.

Between :

Datla Varshala Raju and others. ... Petitioners

And

Bank of India, Visakhapatnam Branch,
Visakhapatnam. ... Respondents

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.24827 OF 2004

ORDER :

This writ petition is filed seeking a declaration that the notice dated 20-10-2004 issued by the respondent - Bank of India - under Section 13 (2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the Securitisation Act') as arbitrary, illegal and without jurisdiction.

The facts, which are not in dispute, as under :

The respondent Bank filed O.A.No.148 of 2002 before the Debts Recovery Tribunal, Visakhapatnam, under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short, 'the Act of 1993') for recovery of a sum of Rs.2,14,69,010-63 ps with interest at the rate of 18% p.a. in which the petitioners herein were made as defendants 4, 5 and 6. It was pleaded in the said O.A. that the 1st defendant company, by name M/s. Visakha Aqua Farms Limited, availed cash credit facility from the respondent Bank to which the defendants 2 to 6 therein stood as guarantors creating equitable mortgage of immoveable properties belonging to defendants 4 to 6 i.e., the petitioners herein. It was alleged that the 1st defendant company committed default in payment of the loan amount in spite of notices issued and that the defendants 1 to 6 are jointly and severally liable for the suit claim. The writ petitioners (defendants 4 to 6) filed written statements disputing the claim. They also denied the deposit of title deeds of the properties as claimed by the respondent Bank.

While the said O.A.No.138 of 2002 is pending, the respondent Bank issued the impugned notice under Section 13 (2) of the Securitisation Act, 2002, dated 20-10-2004, which was published in the local dailies, demanding repayment of the dues under the loan account availed by M/s. Visakha Aqua Farms Limited. In the said notice, it was made clear that unless the amounts due are repaid within 60 days from the date of notice, the immoveable properties mortgaged with the respondent Bank would be brought to sale for realisation of the amounts due.

The said notice is under challenge in this writ petition contending that since the lands said to have been mortgaged with the respondent Bank by depositing title deeds as collateral security are agricultural lands, the same are exempted under Section 31 (i) of the Securitisation Act and therefore the respondent Bank cannot sell the same by invoking the provisions of the Securitisation Act. It is also contended that while O.A.No.148 of 2002 filed under Section 19 of the Act of 1993 for recovery of the amounts due is pending, the respondent Bank has no jurisdiction to invoke the provisions of the Securitisation Act against the very same properties without seeking permission of the Debts Recovery Tribunal.

In the counter-affidavit filed on behalf of the respondent Bank, it is stated that the respondent Bank filed O.A.No.138 of 2002 on the file of Debts Recovery Tribunal, Visakhapatnam. Later it was found that the properties mortgaged by the petitioners herein were not used as agricultural lands and there was no activity of cultivation in the lands and the same was kept as open land. Further the lands in question became urban lands and part of Greater Visakhapatnam. They were included in the limits of Visakhapatnam Urban Agglomeration and there is no cultivation in the lands. The user of the lands is the criteria for deciding whether the lands are agricultural lands. The petitioners are essentially businessmen and not agriculturists. It is further stated that the lands are part of

Visakhapatnam Municipality and they are kept as open spaces. Thus, it is contended that the respondent is not precluded from initiating proceedings under the Securitisation Act while the O.A. is pending before the Debts Recovery Tribunal since the remedy under Securitisation Act is an additional remedy.

I have heard the learned Counsel for both the parties and perused the material on record.

Section 31 (i) of the Securitisation Act runs as under :

“31. Provisions of this Act not to apply in certain cases :-

The provisions of this Act shall not apply to :

- (a)*
- (b)*
- (c)*
- (d)*
- (e)*
- (f)*
- (g)*
- (h)*
- (i) any security interest created in agricultural land;*
- (j)”*

A bare reading of the above provision shows that the provisions of the Securitisation Act are not applicable to any interest created in agricultural land.

The specific case of the writ petitioner is that the lands in question, in respect of which it is claimed that the mortgage was created are agricultural lands. As a matter of fact, in the schedule to O.A.No.138 of 2002 filed by the respondent Bank the lands in question were described as agricultural lands. However, the respondent contends that as on today the lands are not being used for cultivation. It is contended that the petitioners are using the said lands as aqua farms and therefore the same ceased to be an agricultural land and consequently, they are not exempted from the provisions of the Securitisation Act.

The learned Counsel appearing for the respondent Bank, in

support of the above contentions, relied upon the decision of the Supreme Court in *L.T. COMMR. v. BENOY KUMAR*^[1] and a Division Bench decision of this Court in *M. MEENAKSHAMMA v. C.W.T.*^[2].

As noted above, the question with regard to the nature of the land in question essentially is a disputed question of fact, which cannot be gone into and decided by this Court in exercise of jurisdiction under Article 226 of the Constitution of India.

Since immediately after publication of the impugned notice under Section 13 (2) of the Securitisation Act, the petitioners submitted a representation raising the above objections, it is for the respondent Bank to consider the same and pass appropriate orders either accepting or rejecting the said objection.

That apart, Section 13 (3A) of the Securitisation Act as inserted by the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2004 w.e.f. 11-11-2004 makes it obligatory on the secured creditor to consider such representation or objection and where the secured creditor comes to a conclusion that such objection is not acceptable or tenable, he shall communicate within one week, after receipt of such representation, the reasons for non-acceptance of the objections raised by the borrower. Since such objections raised by the petitioners are still pending with the respondent, it is not necessary for this Court to express any opinion on merits at this stage.

The other contention raised by the petitioners that the respondent Bank is not entitled to invoke parallel remedies under the Act of 1993 and the Securitisation Act, 2002 can also be raised by way of objections in response to the impugned notice under Section 13 (2) of the Securitisation Act, in which event, the respondent Bank will consider the same and take appropriate steps in accordance with law.

Accordingly, the Writ Petition is disposed of granting liberty to the petitioners to raise fresh objections, if any, pursuant to the notice

dated 20-10-2004 within four weeks from today. On receipt of such objections, the respondent Bank shall consider the same as well as the objections already raised, and pass appropriate orders in accordance with law and communicate the same to the petitioner. Till such time, the respondent Bank is directed not to take any further steps under the Securitisation Act, 2002.

Writ Petition is accordingly disposed of. No costs.

G. ROHINI, J.

Dt. 10-7-2006

gbs

[\[1\]](#) A.I.R. 1957 SC 768

[\[2\]](#) 1967 (1) An.W.R. 327